IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 536 OF 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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ASHABHIL ADIVASI CO-OPERATIVE SOCIETY LIMITED (PROPOSED) - Petitioner(s)

Versus

COMPETENT AUTHORITY AND ADDL. COLLECTOR, URBAN LAND CEILING & ANR. - Respondent(s)

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Appearance :
Shri D.N. Vakil for Shri Vijay H. Patel for Petitioner(s).
Shri A.Y. Kogje, Asst. Government Pleader for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 21/02/2007

ORAL JUDGMENT

From the facts, it would appear that the petitioner, Shri

Ashabhil Adivasi Cooperative Society Limited (Proposed), made some representation to the Government for allotment of land so that the Members of the proposed society may have some place to build their dream house. It appears that certain lands were allotted, but, later on, the order was cancelled. It also appears that in the meanwhile, sub-plots were made on the allotted land and the Government issued some Sanads in favour of some persons after receiving the money. It appears that under the said Sanad, certain rights were conferred upon such allottee. The present petitioner, claiming itself to be a Cooperative Society Limited, has filed the present Writ Application. I had asked the learned Counsel for the petitioner that how the petition at the instance of an unregistered cooperative society would be maintainable, especially, when no office-bearers of such society has come forward to represent the society. I had clearly observed that neither the name of the President of the Society nor the name of the Secretary of the Society is shown in the cause title of the matter.

2. The petitioner is not registered under the Registration of the Societies Act or Cooperative Societies Act. It is not a registered partnership firm or a registered Company or a Corporation. Under the circumstances, the petitioner at the best can be taken to be a group of persons. A group of persons, unrepresented by anybody, cannot file a Writ Petition under Article 226 of the Constitution of India.

3. Shri D.N. Vakil, learned Counsel for the petitioner, placing his strong reliance upon a judgement of the Full Bench of the Allahabad High Court in the matter of ***Umesh Chand Vinod Kumar & Ors. vs. Krishi Utpadan Mandi Samiti***, ***Bharthana, & Anr.***, [***AIR 1984 SC 46***], submits that an unregistered body can maintain a writ application before the High Court under certain circumstances. I have gone through the

said judgement.

4. The Full Bench of Allahabad High Court has observed that:

> *"An association of persons, registered or unregistered, can file a petition under Art. 226 for enforcement of the rights of its members as distinguished from the enforcement of its own rights- (1) In case members of such an association are themselves unable to approach the court by reason of poverty, disability or socially or economically disadvantaged position (little Indians). (2) In case of a public injury leading to public interest litigation provided the association has some concern deeper than that of a way-farer or a busybody i.e. it has a special interest in the subject matter; (3) Where the rules or regulations of the association specifically authorise it to take legal proceedings on behalf of its members, so that any order passed by the court in such proceedings will be binding on the members. In other cases an association whether registered or unregistered cannot maintain a petition under Art. 226 for the enforcement or protection of the rights of its members, as distinguished from the enforcement of its own rights."*

The three principles laid down by the Allahabad High Court are not available in the present case because it is not the case of the petitioner that the members of the association are themselves unable to approach the Court by the reason of poverty, disability or socially or economically disadvantaged position. Present is a case where each of the members is trying to purchase the property for building a house. If a person proposes to purchase a property to build his house, then, such person cannot be said to be poverty stricken or suffering with some

disability or placed in a disadvantaged position either socially or economically. Present is also not a case of public injury leading to public interest, nor present is a case where the rules or regulations of the association specifically authorise the unregistered body to take legal proceedings on behalf of its members. In the present case, the society, i.e. the petitioner, does not say that it has its own constitution, rules or bye-laws and under such constitution, rules or bye-laws, the society is authorised to sue or be sued in its own name. The said judgement of the Allahabad High Court would not provide any solace to the petitioner.

5. The petition, in the considered opinion of this Court, is not maintainable. Before the seal of dismissal could be affixed, the learned Counsel for the petitioner submits that many of the Members of the Society have paid good money and the Government had issued certain Sanads in their favour and have made them owners of the property and under the circumstances, while dispossessing the Society from the said property, such persons, who have paid money to the Government, cannot be dispossessed. In the opinion of this Court, such question cannot be raised in this petition because such persons have not come to this Court. Such persons, however, would be free to take appropriate steps in accordance with law.

6. The petition deserves to and is dismissed, but, however with the clarification and liberty as aforesaid. Rule is discharged. Interim relief, if any, granted earlier is vacated. No costs.

[R.S.Garg, J.]

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